

APPEAL NO. 020754
FILED MAY 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 26, 2002. The hearing officer resolved the disputed issues by determining that the appellant (carrier) waived its right to contest compensability of the claimed injury, therefore the respondent's (claimant) injury is compensable as a matter of law and that she had disability beginning _____, and continuing through the date of the hearing. The carrier appealed, asserting the claimant had no injury, therefore there was nothing for the carrier to waive. The claimant responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's injury is compensable as a matter of law, and that she had disability beginning on _____, and continuing through the date of the hearing. The hearing officer determined that the claimant had an injury and has been unable to work because of this injury since _____. Upon review of the record, we find these determinations to be sufficiently supported by the evidence and they are affirmed.

Insofar as the carrier argues that the holding in Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.) applies, we have held that Williamson does not apply to situations where there is evidence of an injury and the issue is whether the injury is related to the employment. Texas Workers' Compensation Commission Appeal No. 981847, decided September 25, 1998, and Texas Workers' Compensation Commission Appeal No. 992864, decided February 4, 2000. The carrier asserts that they are under no obligation to dispute an injury if it is clearly an ordinary disease of life. The court in Williamson made no such determination, they merely held that "[i]f a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." In a footnote to that comment, the court stated "[c]ertainly the carrier is taking a risk by not contesting compensability, since there is no guarantee that the [Texas Workers' Compensation] Commission will agree with its assessment. In that case, under the statute the carrier will have waived its defenses to compensability." In this case, the hearing officer determined that there was an injury, albeit not work related. The argument that it is an ordinary disease of life is a defense to compensability which the carrier has waived by failing to timely contest the claim.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **TPCIGA for Reliance National Indemnity Company an impaired carrier**, and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR, TPCIGA
9120 BURNETT ROAD
AUSTIN, TEXAS 78758.**

Daniel R. Barry
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge